

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-02-TC-025
Booth American Company)	
d/b/a Bloomfield Cable TV)	CUID No. MI0929 (Bloomfield)
)	
Petition for Reconsideration)	

ORDER ON RECONSIDERATION

Adopted: May 6, 2002

Released: May 8, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order we consider a petition for reconsideration ("Petition") of Order, DA 97-1204 ("Prior Order")² filed with the Federal Communications Commission ("Commission") on July 11, 1997, by the local franchising authority ("LFA") for the above-referenced community. In the Prior Order, the Cable Services Bureau dismissed complaints filed against the rates charged by the above-referenced operator ("Operator") for its cable programming services tier ("CPST") in the community referenced above. In this Order, we deny the LFA's Petition.

2. Under the provisions of the Communications Act³ that were in effect at the time the referenced complaints were filed, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992⁴ ("1992 Cable Act") required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or LFA. The Telecommunications Act of 1996 ("1996 Act"),⁵ amended Section 623 of the Communications Act and redefined a small cable operator as one that "directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁶ In the 1996 Act, Congress determined that, effective February 8, 1996, the Commission shall not apply its CPST rate regulation rules, promulgated under Sections 623(a), (b) and (c) of the Communications Act,⁷ to a small cable operator in any franchise

¹ Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

² *In the Matter of Booth American Company d/b/a Bloomfield Cable TV*, DA 97-1204, 12 FCC Rcd 1711 (CSB 1997).

³ Communications Act, Section 623(c), *as amended*, 47 U.S.C. § 543(c)(1996).

⁴ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁶ 47 U.S.C. § 543(m)(2) (1996).

⁷ 47 U.S.C. §§ 543(a) - (c) (1996).

area in which that operator services 50,000 or fewer subscribers.⁸

3. In the Prior Order, the Cable Services Bureau found that Operator fit the definition of "small cable operator" as defined above. It dismissed all pending complaints, concluding that small cable operators "could not effectively be restricted from offsetting any possible prior years' liability against a contemporaneous actual or putative rate increase."⁹ In light of the Congressional finding that post-1996 CPST rate regulation for small systems is unjustified, the Cable Services Bureau determined that the expense associated with the rate regulation process was not outweighed by this likely zero net benefit to subscribers.¹⁰

4. In its Petition, the LFA argues that at the time the Cable Services Bureau determined that Operator qualified as a "small cable operator," Operator was anticipating a sale of its Bloomfield system to MediaOne, a company that could not qualify for "small cable operator" status. The LFA argues that because of the sale, Operator's CPST rates will be subject to regulation on a going forward basis. As a result, the LFA claims that adjudication of the rate complaints will result in significant benefit to subscribers. The LFA asserts that had the Commission considered the pending sale of the Bloomfield system by Operator, the Commission would not have found Operator to be a "small cable operator" and would not have concluded that adjudication of the complaints would not result in a net benefit to subscribers. We disagree.

5. The Commission's jurisdiction over CPST rates is complaint driven. Following the amendment of the definition of "small cable operator" by the 1996 Act, the Cable Services Bureau dismissed all pending complaints against all cable operators who met the revised definition of "small cable operator". In this case, the complaints in issue were filed on or before August 18, 1994, well before the anticipated sale of Operator's Bloomfield system. At a time when the complaints were still pending, Operator qualified as a "small cable operator" under the 1996 Act. Whether or not Operator's system in Bloomfield was later acquired by an operator that did not meet the definition of "small cable operator" does not change the determination that, at the time the complaints were still pending, the Cable Services Bureau lacked jurisdiction to review the complaints, using the same test for "small cable operator" status that the Cable Services Bureau applied at that time to all cable systems with pending complaints. It would be unfair to apply a different standard to Operator simply because of the possibility of a sale of the Bloomfield system. It was also possible that, had the Cable Services Bureau adjudicated the pending complaints, Operator might have been able to offset its refund liability, if any, with CPST rate increases, prior to the sale.

6. In the Prior Order, the Cable Services Bureau dismissed only those complaints that were pending against Operator's CPST rates. The Prior Order did not affect the LFA's ability to review Operator's or its successor's basic tier rates. Nor did the Prior Order prohibit the LFA from filing a complaint against the CPST rates of Operator's successor, which it did not. We are not persuaded by the LFA's arguments that the Cable Services Bureau erred by dismissing the pending complaints against Operator in the Prior Order.

⁸ 47 U.S.C. § 543(m)(1) (1996). *See also* 47 C.F.R. § 76.1403(a) (1998).

⁹ Prior Order at 4.

¹⁰ *Id.*

7. Accordingly, IT IS ORDERED, pursuant to Sections 0.111, 0.311 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and 1.106, that the LFA's Petition for Reconsideration of In the Matter of Booth American Company d/b/a Bloomfield Cable TV, DA 97-1204, 12 FCC Rcd. 1711 (1997) IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau